

# **BEFORE THE DIVISION OF INSURANCE**

## **STATE OF COLORADO**

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### **FINAL AGENCY ORDER O-00-231**

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#### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIRST AMERICAN TITLE INSURANCE COMPANY,**

#### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of First American Title Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report, dated September 30, 1999, (the "Report") relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

#### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division and authorized to conduct the business of title insurance, as defined by § 10-11-102(3), C.R.S.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on or about September 30, 1999, the Division completed a routine market conduct examination of the Respondent. The period of examination was January 1, 1997, to December 31, 1997.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report. In addition, the Division held meetings with Respondent to discuss and consider Respondent's rebuttals and to explain numerous issues regarding the examination and compliance with Colorado law.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Accepting title risks from producers without making or obtaining the requisite producer appointment. Respondent shall review and amend its procedures to ensure that agencies are appropriately licensed and appointed in accordance with Colorado law. Respondents shall remit any unpaid appointment fees to the Division. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. The Commissioner amends Issues B and C by combining the issues into a single violation as follows: Issue B concerns the following violation: Failure to provide written notification to prospective insureds of the Respondent's general requirements for the deletion of exceptions or exclusions to coverage related to unfiled mechanics or materialman's liens and/or the availability of mandatory GAP coverage.
  - a. Respondent shall amend its underwriting guidelines and other relevant procedures to comply with Division regulation 3-5-1, VII, L concerning the notification requirements for mechanics and materialman's liens and GAP coverage.

- b. The Respondent shall perform an audit of all claims denied based, in whole or in part, upon intervening matters occurring during the GAP period, and/or denied based upon the mechanics lien exception. The period of the audit shall be January 1, 1998, until the date of this Order or until the date upon which Respondent can demonstrate compliance with subparagraph (a), above, whichever occurs earlier. The Respondent shall accept liability on all claims identified by the audit and refund amounts owed to insureds.
11. Issue C concerns the following violation: Misrepresenting the benefits, advantages, conditions and/or terms of title insurance policies through omission of applicable endorsements. The recommendations on Issue C of the Report are amended as follows: Respondent shall demonstrate to the Division that it has amended its procedures so that each policy issued clearly evidences a complete contract.
12. Issue D concerns the following violation: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers. Issue D of the Report is amended as follows: The Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies were not permitted to file closing and settlement fees with the Division. Accordingly, no corrective action or fine is imposed for Respondent's past practices regarding violations involving closing and settlement matters. The Commissioner notes that Respondent is an underwriter/insurer and has no direct operations in Colorado.

Under prior law, title agencies were permitted, in fact, to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is as follows: Where the title agency maintains the schedule of closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

13. Issue E concerns the following violation: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify title insurance premium rates. The Commissioner amends the Report as follows: The references regarding Issue E of the Report which refer to closing and settlement fees are deleted. Respondent shall provide the Division with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Respondent premium rates. The filing shall specifically identify and explain how a reasonable profit provision is incorporated into the development of the Respondent's premium rates.

14. Issue F concerns the following violation: Respondent's use of rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates. The Commissioner amends the recommendations contained in the Report as follows:
- a. Respondent shall review its procedures related to the filing of rates.
  - b. Respondent shall initiate measures, including: 1) in-service training and education of all employees, 2) exploration of existing technology to automate its rate and fee computation process, and 3) refining and simplifying current rate and fee structures, to address, at a minimum, the rating of policies and their applicable endorsements.
  - c. Respondent shall utilize rates in connection with the issuance of a title policy which accurately reflect the rates on file with the Division.
  - d. Respondent shall conduct a self-audit or shall hire an independent auditing firm to conduct an audit of rate and premium calculations for calendar year 2001. This audit shall consist of an examination of 100 randomly-selected files regarding policies and commitments quoted and written during the calendar year. Respondent shall prepare a written report summarizing the audit and shall certify that relevant Respondent officers have reviewed all elements of the audit. Respondent shall submit the audit reports to the Division no later than March 31, 2002.
    - 1) If the audit reveals an error ratio in excess of 5%, Respondent shall submit a plan of correction to the Division which explains the actions to be taken by Respondent to assure an acceptable error ratio in the future.
    - 2) An error occurs when Respondent fails to use the rates on file with the Division, whether the rates are in excess of or less than the filed rates.
    - 3) "Error ratio" is the number of files in which a material error is made, divided by the total number of audited files.
    - 4) "Material error" means an error of ten dollars (\$10) or more.
15. Issue G concerns the following violation: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Respondent. The Respondent shall provide evidence demonstrating the Respondent has reviewed its procedures pertaining to record maintenance to ensure future compliance with this issue.
16. Issue H concerns the following violation: Using closing and settlement service fees and charges not on file with the Division and/or misapplication of filed schedule of

closing and settlement services fees and charges. Issue H of the Report is amended as follows: The Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies were not permitted to file closing and settlement fees with the Division. Accordingly, no corrective action or fine is imposed for Respondent's past practices regarding violations involving closing and settlement matters. The Commissioner notes that Respondent is an underwriter/insurer and has no direct operations in Colorado.

Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is as follows: Where the title agency maintains the schedule of the closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

17. Issue I concerns the following violation: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims. The Respondent shall provide evidence that it has reviewed all Respondent rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division that all claims will be paid and investigated in accordance with Colorado insurance laws. The Commissioner amends the recommendations contained in the Report to include a requirement that Respondent must perform the above corrective actions when it delegates claims handling functions to another entity.
18. Issue J concerns the following violation: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. Respondent shall review and amend its procedures and those of its authorized agents relating to the handling of claims to ensure that all claims arising under insurance policies, whether received by authorized agents or directly by the Respondent, will be acknowledged and acted upon in accordance with statutory requirements.
19. Issue K concerns the following violation: Failure to produce and/or maintain adequate claim records for market conduct review. The Respondent shall provide evidence that a review of procedures pertaining to record maintenance in the context of claims handling has been completed. Upon completion, the Respondent shall amend and document its claims manual and implement procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the

requirements of Colorado law.

20. Issue L concerns the following violation: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Respondent rates. The Respondent shall file the Colorado Uniform Financial Reporting Plan and/or submit an annual filing of sufficient financial data to justify Respondent's rates to the Division.
21. Issue M concerns the following violation: Failure to adopt and/or implement an anti-fraud plan. The Respondent shall provide evidence demonstrating that the Respondent has adopted and implemented an anti fraud plan in compliance with the statute cited above.
22. Pursuant to §10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of thirteen thousand seven hundred fifty and no/100 dollars (\$13,750.00) for the cited violations of Colorado law.
23. All requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including all monetary payments to covered persons, unless a different time frame is specifically noted in the Order.
24. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
25. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the final examination report dated September 30, 1999, are hereby adopted as may be modified by this Order, and are filed and made an official record of this office. The above Order is hereby approved this 25<sup>th</sup> day of August, 2000.

A handwritten signature in black ink, appearing to read "Kirven" followed by a stylized circular flourish.

William J. Kirven, III  
Commissioner of Insurance